

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:NR:HOU:2:POSTU-111861-02  
DBMatta

date: JUL 23 2002

to: [REDACTED]  
LMSB Employment Tax Manager  
Group [REDACTED], M/S 4166

from: Area Counsel  
(Natural Resources: Houston)

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subject: Effect of Employment Tax Audit on Subsequent Income Tax Audit

This memorandum responds to your request for assistance dated June 24, 2002. This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

You are requesting advice concerning restrictions on the examination of a taxpayer under I.R.C. § 7605(b). The Service is currently auditing a CIC taxpayer for income tax purposes. The employment tax agent wants to examine tax years on a cycle that is not open for income tax purposes. The employment tax audit will include requests for information which are part of the Form 1120 return. You want to know if the employment tax agent's examination also opens up the income tax examination for the subsequent cycle. The answer is no.

The Seventh Circuit Court of Appeals in United States v. Kendrick, 518 F.2d 842 (7<sup>th</sup> Cir. 1972) addressed the effect of I.R.C. § 7605(b) and held that the prior completed audit of the taxpayer's books for income tax purposes did not preclude examination of those same books for excise fuel tax purposes. Similarly, in United States v. Renwald, 82 AFTR 2d. 98-7057, the Court held that the income tax audit did not preclude examination of records for an employment tax audit or require notice under I.R.C. § 7605(b) for conducting a second audit. Both Courts

relied on the Fifth Circuit's reasoning in United States v. Schwartz, 469 F.2d 977 (5<sup>th</sup> Cir. 1972), where the court stated

We do not believe that the use of the word "inspection" in Section 7605(b), as contrasted with the words "unnecessary examination or investigations" can be so restricted as to mean that there is an "inspection" every time the agent or special agent looks at a book of account of a taxpayer. The word "inspection" must, in all reason have some relation to the activities of the agents in making the examination authorized under the statute.

Both Courts cited to United States v. Crespo, 281 F.Supp. 928, 933 (D.Md. 1968) for its interpretation of I.R.C. § 7605(b) which found that "the fact that a revenue agent has seen a cash book, journal or ledger once does not mean that he may not need to see it again for a different purpose."

The audit of employment tax issues in the subsequent cycle has no effect on the Service's timing or ability to open an income tax audit of the subsequent cycle once the current cycle is complete. The audits are independent of each other and do not violate the provisions of I.R.C. § 7605(b). If you have any questions, please contact the undersigned at (281) 721-7328.

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By: \_\_\_\_\_  
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